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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 TROLLERS T. FLEMING
12 AKA MALEKK X SHABAZZ,

13 Petitioner,

14 v.

15 PAT GLEBE,

16 Respondent,

Case No. C09-5678RBL

ORDER

17 This habeas corpus petition, filed pursuant to 28 U.S.C. § 2254, has been referred to
18 Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and 636 (b)(1)(B),
19 and Local Magistrate Judge's Rule MJR3 and MJR4. Before the court is a motion filed by
20 petitioner on December 21, 2010. Doc. 8. After reviewing the matter, the court finds and orders
21 as follows:
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23 1. On November 4, 2009, the court directed petitioner to either file an amended
24 petition or supplemental materials to support his challenge to his state conviction and sentence.
25 The court found that the current petition fails to state the grounds upon which he is basing his
26 request for the writ, fails to state whether these grounds were appealed in the original court

1 action, and fails to provide necessary information for a determination on his petition, including
2 the dates when other courts decided the appeals. Doc. 6.

3 2. In response, petitioner filed the instant motion, which is titled as a motion to
4 amend or modify the petition. Review of the motion, however, reveals that petitioner is asking
5 to: (i) remove a non-respondent from the petition; (ii) appoint counsel; and (iii) request an
6 evidentiary hearing. Petitioner also argues that he is actually innocent. In his 55-page document
7 Petitioner quotes biblical scripture, explains his opinions regarding judges and juries, among
8 other things, and presents portions of briefs from other cases. The court notes that the motion
9 exceeds the page limitation set forth in Local Rule CR 7.
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11 3. The court previously denied petitioner's request for counsel, and the request to
12 reconsider this issue is DENIED. Petitioner has failed to set forth any new evidence or argument
13 that would warrant reconsideration of that issue at this time.
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15 4. Petitioner's request for an evidentiary hearing is also DENIED. Evidentiary
16 hearings are not usually necessary in a habeas case. According to 28 U.S.C. §2254(e)(2) (1996),
17 a hearing will only occur if a habeas applicant has failed to develop the factual basis for a claim
18 in state court, and the applicant shows that: (A) the claim relies on (1) a new rule of
19 constitutional law, made retroactive to cases on collateral review by the Supreme Court that was
20 previously unavailable, or if there is (2) a factual predicate that could not have been previously
21 discovered through the exercise of due diligence; and (B) the facts underlying the claim would
22 be sufficient to establish by clear and convincing evidence that but for constitutional error, no
23 reasonable fact finder would have found the applicant guilty of the underlying offense. 28
24 U.S.C. §2254(e)(2) (1996). Here, the petition remains incomplete. Respondent has not been
25 asked to file an answer to the petition. It is premature to consider whether or not an evidentiary
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1 hearing is necessary, because without a complete petition and answer the court is unable to
2 determine if any relevant factual dispute exists.

3 5. Most significantly, petitioner's pleadings do not address the deficiencies in his
4 petition that have previously been raised by this court. For instance, petitioner has not provided
5 a concise statement setting forth each of the grounds or arguments he is making to challenge his
6 state conviction and sentence and petitioner has not fully explained how each of those grounds
7 has been properly exhausted prior to filing this federal petition for writ of habeas corpus. As a
8 threshold issue the Court must determine whether or not petitioner has properly presented his
9 federal habeas claims to the state courts. 28 U.S.C. § 2254 (b)(1) states, in pertinent part:
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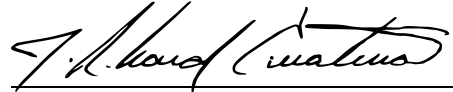
11 (b)(1) An application for a writ of habeas corpus on behalf of a person in custody
12 pursuant to the judgment of a State court shall not be granted unless it appears that—
13 (A) the applicant has exhausted the remedies available in the courts of the State; or
14 (B)(i) there is an absence of available State corrective process; or (ii) circumstances
15 exist that render such process ineffective to protect the rights of the applicant.

16 If exhaustion is to be waived, it must be waived explicitly by respondent. 28 U.S.C. §
17 2254(b)(3).
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19 6. Petitioner will be granted one last opportunity to file an amended petition that
20 cures the defects outlined in the court's November 4, 2009, order. The amended petition must be
21 submitted on the court's approved form for habeas petitions. Local Rule 100. The amended
22 petition shall be filed with the court clerk on or before **February 26, 2010**. Failure to comply
23 with this order will result in a Report and Recommendation that this petition be dismissed for
24 failure to prosecute, failure to comply with a court order, and for the defects in the original
25 petition.
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1 7. Petitioner's requests contained within his motion (Doc. 8) are **DENIED**. The
2 Clerk is directed to note the **February 26, 2010**, deadline on the court's motion calendar and
3 send petitioner a blank form for habeas corpus petitions.

4 DATED this 1st day of February, 2010.

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8 J. Richard Creatura
9 United States Magistrate Judge
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